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## CITATIONS

*Case:*


*National Labor Relations Board* v. *Thomas W. Dant, et al., Co-Partners, d/b/a Dant & Russell, Ltd.*, 195 F. 2d 299, certiorari granted, October 13, 1952, No. 97, this Term ..... 1, 4


*Statute:*


National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*):

| | |
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# In the Supreme Court of the United States

OCTOBER TERM, 1952

459

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

AMERICAN THREAD COMPANY

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

---

The Acting Solicitor General, on behalf of the National Labor Relations Board, files this petition for a writ of certiorari to review the decision of the Court of Appeals for the Fifth Circuit entered on July 31, 1952, setting aside an order issued by the Board against the American Thread Company, hereinafter called the Company, and prays that the Court entertain the petition and dispose of it in accordance with this Court's ultimate decision in *National Labor Relations Board* v. *Thomas W. Dant, et al., Co-Partners doing business as Dant & Russell, Ltd.*, No. 97, this Term.

## OPINIONS BELOW

The opinion of the Court of Appeals (R. 147-148)* is reported at 198 F. 2d 137. The findings of

* The symbol "R" designates references to Volume I of the Transcript of Record printed in the court below.

fact, conclusions of law, and order of the Board (R. 101-106) are reported at 94 NLRB 1699.

### JURISDICTION

The decree of the Court of Appeals (R. 149) was entered on July 31, 1952. The time for filing a petition for a writ of certiorari was extended by order of Mr. Justice Black, on October 17, 1952, from October 28, 1952, to and including November 21, 1952 (R. 151). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and Section 10(e) of the National Labor Relations Act, as amended.

### QUESTION PRESENTED

An unfair labor practice charge was filed by a union at a time when the officers of this union had submitted the non-Communist affidavits prescribed by Section 9(h) of the National Labor Relations Act, as amended, but the officers of the Congress of Industrial Organizations, with which the charging union was affiliated, had not. The officers of the CIO submitted their affidavits, however, before the General Counsel issued a complaint based upon the union's charge. The question presented is whether an unfair labor practice complaint may properly issue at a time when the charging union is in full compliance with Section 9(h), notwithstanding that there was not full compliance when the charge was filed.

### STATUTE INVOLVED

The statutory provision principally involved is Section 9(h) of the National Labor Relations Act,

as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*). This provision and other relevant portions of that Act are set out in the Appendix, *infra*, pp. 5-8.

## STATEMENT

On August 12, 1949, and September 29, 1949, the Textile Workers Union of America, CIO, hereinafter called the Union, filed charges alleging that the Company had engaged in unfair labor practices violative of Section 8(a)(1) and (3) of the Act (R. 8-10, 12-15). According to the Board's administrative records the Union at that time was in full compliance with the requirements prescribed by Section 9(h). The CIO, with which the Union was affiliated, did not come into full compliance with these requirements until December 22, 1949.

On or about October 31, 1950, the General Counsel on behalf of the Board issued a complaint on the charges filed by the Union (R. 15-20). After the customary proceedings the Board issued its decision and order (R. 101-104). It found that the Company had engaged in anti-union conduct violative of Section 8(a)(1), dismissed the complaint insofar as it alleged a violation of Section 8(a)(3), and directed the Company to take appropriate remedial measures.

Thereafter the Board petitioned the court below for enforcement of its order (R. 143). The court, without discussing the merits of the unfair labor practice findings, set aside the Board's order on the ground that the Board was without power to issue a complaint on charges filed by a union not in

compliance with Section 9(h) when the charges were filed, notwithstanding that the union came into compliance prior to the issuance of the complaint. Citing *National Labor Relations Board* v. *Dant & Russell,* 195 F. 2d 299 (C. A. 9), certiorari granted October 13, 1952, No. 97, this Term, the court held "Inasmuch as the charges were filed at a time when the Union was not in compliance, and since the subsequent compliance had no retroactive effect to give legal substance to the charges, or empower the Board to issue a complaint, the order of the Board is unauthorized and cannot be enforced." (R. 148.)

### REASONS FOR GRANTING THE WRIT

The question presented here is identical with the question presented in the *Dant & Russell* case, No. 97, this Term, in which this Court granted certiorari on October 13, 1952. The same disposition should therefore be made of this case as is made of the *Dant & Russell* case.

### CONCLUSION

For the reasons stated above, we respectfully suggest that this Court retain the present petition on its docket pending decision in No. 97, and that this petition be thereafter disposed of in accordance with the holding in that case.

Respectfully submitted.

ROBERT L. STERN,
*Acting Solicitor General.*

GEORGE J. BOTT,
*General Counsel,*
*National Labor Relations Board.*

NOVEMBER, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

SEC. 9. * * *

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f)(A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f)(B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9(e)(1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9(e)(1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affi-

davit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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